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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES E. HERMANSON,)	
)	
Petitioner,)	
)	3:17-cv-00721-HDM-VPC
v.)	
)	
ISIDRO BACA, et al.,)	ORDER
)	
Respondents.)	
)	
_____)	

Before the court are petitioner's motions for leave to file (1) Exhibits 52 and 53 under seal (ECF No. 18) and (2) a second amended petition (ECF No. 19).

On January 25, 2018, the court granted petitioner leave to file an amended petition no later than May 25, 2018. On March 15, 2018, petitioner filed a first amended petition along with a motion to file a second amended petition. In his motion, petitioner does not necessarily agree that is the deadline, he has filed a first amended petition out of an abundance of caution and seeks leave to file a second amended petition after newly appointed counsel's review and

1 investigation is complete.

2 Petitioner thus seeks to employ a "two-step" procedure whereby
3 he: (a) files an initial counseled amended petition preserving all
4 then-known claims free of possible relation-back issues; and (b)
5 thereafter potentially files a second amended petition after
6 petitioner's newly appointed federal habeas counsel has had a full
7 opportunity to independently investigate all potential claims. The
8 court expressly has authorized such a "two-step" procedure in prior
9 cases, and it does so here. *See, e.g., McMahon v. Neven*, No.
10 2:14-cv-00076-APG-CWH, ECF No. 29 (D. Nev., May 29, 2014) (approving
11 and explaining the court's rationale in allowing a bifurcated
12 amendment procedure in habeas cases where the limitation period
13 potentially may expire before federal habeas counsel would be able to
14 conduct a complete investigation).

15 IT IS THEREFORE ORDERED that petitioner's motion (ECF No. 19) for
16 leave to file a second amended petition is GRANTED.

17 IT IS FURTHER ORDERED that petitioner shall have up to and
18 including July 9, 2018, within which to file a second amended petition
19 and/or seek other appropriate relief. Neither the foregoing deadline
20 nor any extension thereof signifies or will signify any implied
21 finding as to the expiration of the federal limitation period and/or
22 of a basis for tolling during the time period established. Petitioner
23 at all times remains responsible for calculating the running of the
24 federal limitation period and timely asserting claims, without regard
25 to any deadlines established or extensions granted herein. That is,
26 by setting a deadline to amend the petition and/or by granting any
27 extension thereof, the court makes no finding or representation that
28 the petition, any amendments thereto, and/or any claims contained

1 therein are not subject to dismissal as untimely. *See Sossa v. Diaz*,
2 729 F.3d 1225, 1235 (9th Cir. 2013).

3 IT IS FURTHER ORDERED that: (a) respondents shall not be required
4 to respond to the first amended petition at this time, but that (b)
5 respondents shall file a response to the petition, as then amended,
6 either within sixty (60) days of service of a second amended petition,
7 if filed, or instead within sixty (60) days of the final expiration
8 of the time to do so if petitioner does not file a second amended
9 petition; and (c) petitioner may file a reply within thirty (30) days
10 of service. The response and reply time to any motion filed by either
11 party, including a motion filed in lieu of a pleading, shall be
12 governed instead by the local rules.

13 IT IS FURTHER ORDERED that petitioner's motion for leave to file
14 Exhibits 52 and 53 under seal (ECF No. 18) is GRANTED. The court
15 finds, in accordance with the requirements of *Kamakana v. City and*
16 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), that a compelling
17 need to protect the privacy of petitioner with regard to the sealed
18 exhibits, which comprise his medical and psychological records,
19 outweighs the public interest in open access to court records.

20 IT IS SO ORDERED.

21 DATED: This 19th day of March, 2018.

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24 _____
25 HOWARD D. MCKIBBEN
26 UNITED STATES DISTRICT JUDGE
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